



City of NORFOLK

C: Dir., Department of General Services

To the Honorable Council
City of Norfolk, Virginia

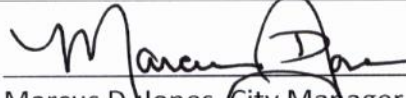
December 15, 2015

From: David S. Freeman, AICP
Director of General Services

Subject: Conveyance of a Buildable
GEM Lot for Disposition Located at
2506 Maltby Avenue to Terry Self

Reviewed: 
Peter H. Chapman, Deputy City Manager

Ward/Superward: 3/7

Approved: 
Marcus D. Jones, City Manager

Item Number:

PH-2

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Terry Self

III. **Description:**

This agenda item is an ordinance to dispose of a vacant, non-standard size parcel of land owned by the City of Norfolk ("city"). This parcel, located at 2506 Maltby Avenue (the "Property"), is a GEM lot and was acquired by the city under § 58.1-3970.1 of the *Code of Virginia*, 1950, as amended. This parcel is to be conveyed to Terry Self under the GEM Side Lot for Development Disposition Program ("Program").

IV. **Analysis**

Terry Self seeks to purchase and develop the property located at 2506 Maltby Avenue by combining it with a lot he has already purchased from a private party at 2504 Maltby Avenue, immediately abutting this GEM lot. Once assembled, the property will be improved with off-street parking to be used by the residents and guests of a four-plex owned by Mr. Self that is located next door, at 2500 Maltby Ave. Presently, the four-plex has no off-street parking and the purchaser's plan of development will allow him to convert a nonconforming building to a conforming one. The cost to Terry Self for purchase of the property from the City is \$6,394.71. Though this sales price is less than the assessed value, the lot is not otherwise buildable given its proximity to the adjacent home. Thus, this conveyance will enable the city to place the property back on the tax rolls and to provide needed off-street parking for the adjacent multi-family use. No specific city use has been identified for the property and therefore, conveyance to Terry Self is consistent with the goals of the Program.

V. Financial Impact

Cost for Conveyance	Six thousand three hundred and ninety four dollars and seventy one cents (\$6,394.71)
Typical Costs of Closing	Each party to this transaction shall pay its own legal fees.
FY2016 Assessed Value of Parcel	\$15,000.00 (loss of \$8,605.29)
Annual Tax Revenue	\$73.54 annually (will increase upon development of property – conveying this property will enable the City to place the property back on the tax rolls)

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

In accordance with the Norfolk City Charter and Virginia State law, a legal notice will be posted in *The Virginian-Pilot*. In addition, public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

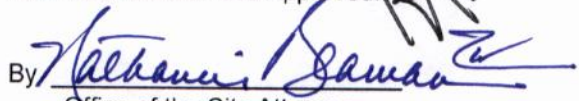
IX. Coordination/Outreach

This ordinance has been coordinated with the Department of General Services – Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A – Legal Description of the Property
- Exhibit B – Proposed Conveyance Agreement

Form and Correctness Approved:

By 
Office of the City Attorney

Contents Approved:

By 
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CONVEYANCE TO TERRY SELF OF A CERTAIN PARCEL OF PROPERTY LOCATED AT 2506 MALTBY AVENUE FOR THE TOTAL SUM OF \$6,394.71 IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONVEYANCE AGREEMENT.

- - -

WHEREAS, Section 58.1-3970.1 of the Code of Virginia, 1950, as amended, authorizes the appointment of a Special Commissioner for the purpose of conveying to localities, in lieu of public auction, certain real property with delinquent taxes and liens that meet certain criteria set forth therein; and

WHEREAS, the parcel of real property located at 2506 Maltby Avenue and more particularly described in Exhibit A, attached hereto and made a part hereof ("Property"), was conveyed to the City of Norfolk ("City") by a Special Commissioner's deed executed and delivered pursuant to a decree entered by the Circuit Court of the City of Norfolk in accordance with the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended; and

WHEREAS, upon acquisition of the Property, the City recorded Declarations of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument No. 060023654, which

document provides, inter alia, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City; and

WHEREAS, Council has determined that the Property is not needed for any of the uses or purposes of the City and is a continuing financial burden on the City; and

WHEREAS, Section 2(5) of the Norfolk City Charter provides the City with broad authority for the disposition of its real property; and

WHEREAS, Council has determined that the public interest is best served by the conveyance of the Property to Terry Self ("Self") for the sum of \$6,394.71 upon the terms and conditions set forth in the Conveyance Agreement attached hereto as Exhibit B; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the conveyance of the Property, located at 2506 Maltby Avenue and further described in Exhibit A, to Self for the total sum of \$6,394.71 upon the terms and conditions set forth in the Conveyance Agreement attached as Exhibit B, is hereby authorized and approved.

Section 2:- That the City Manager, and the other proper officers of the City, are authorized to execute the Conveyance Agreement on behalf of the City of Norfolk and, upon receipt of the sum of \$6,394.71, to deliver to Self a Special Warranty Deed in form satisfactory to the City Attorney, and to do all other things necessary and proper to effect the conveyance of the said Property to Self.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Conveyance Agreement as he may deem advisable to carry out the intent of the Council as expressed herein.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A TO ORDINANCE

TAX ACCOUNT NUMBER 4874-5300

ALL that certain lot of land situate in the City of Norfolk, State of Virginia, and designated as Lot Numbered Five (5) in Block Numbered Three (3), as shown on the plat attached to the deed of Partition between Myra R. Barraud of the one part and Mary A. Barraud and John B. Swartwout of the other part, dated January 18th, 1915, which plat is of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, formerly Norfolk County, Virginia, in Map Book 13, Page 43.

October 9, 2015

EXHIBIT B TO ORDINANCE

CONVEYANCE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2015, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), and **TERRY SELF** ("Self").

RECITALS:

A. City is the owner in fee simple absolute of a certain parcel of real property, together with all rights and appurtenances thereunto pertaining, located in the City of Norfolk, Virginia, known as 2506 Maltby Avenue, more particularly described in Exhibit A, attached to and made a part of this Agreement (the "Property"), the City having acquired the same pursuant to the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended.

B. Upon acquisition of the Property, the City recorded a Declaration of Protective and Restrictive Covenants ("Restrictive Covenants") in the Clerk's Office of the Circuit Court of the City of Norfolk, as Instrument No. 060023654, a copy of which is attached hereto as Exhibit B, which document provides, inter alia, that a violation of any protective or restrictive covenant contained therein shall, in the sole discretion of the City, cause the title to the Property to revert to the City.

C. Self desires to purchase the Property from City and City desires to sell the Property to Self in accordance with the terms and conditions of this Agreement.

D. These recitals are incorporated by this reference into this Agreement.

NOW, THEREFORE, in consideration of the purchase price and the mutual promises contained in this Agreement, the City agrees to convey and Self agrees to accept the conveyance of the Property, together with all easements, rights, and appurtenances thereto as follows:

1. SALE. City agrees to sell and Self agrees to purchase the Property, together with all easements, rights, and appurtenances thereto.

2. PURCHASE PRICE. The purchase price ("Purchase Price") for the Property is Six Thousand Three Hundred and Ninety Four Dollars and 71/100 (\$6,394.71). The Purchase Price will be paid in the form of a certified check or by wire transfer of funds at closing.

3. CONVEYANCE.

a. The City agrees to convey the property to Self by Special Warranty Deed, free and clear of all encumbrances, tenancies, and liens (for taxes or otherwise), except as may otherwise be provided in this Agreement, subject to applicable easements and restrictive covenants of record, and specifically the Restrictive Covenants attached hereto as Exhibit B.

- b. Possession of the Property will be given to Self at Closing.
- c. City agrees to pay the expenses of preparing the deed. Self will pay all other fees and costs charged in connection with the transfer of the Property and the recordation of the deed.
- d. City and Self agree that the attorney or title insurance company ("Title Company") selected by the Purchaser shall act as the settlement agent ("Settlement Agent") at Purchaser's expense. The Settlement Agent shall prepare the settlement statement, update and record the deed, collect and disburse settlement funds in accordance with this Agreement and the settlement statement, and file any required state and federal tax forms or other certifications in accordance with Paragraph 15.

4. CLOSING. The Closing will be made at the offices of the Norfolk City Attorney, in Norfolk, Virginia 23510, or such other location as the parties may agree, within 120 days of the effective date of the ordinance authorizing the conveyance of the property by the City ("Effective Date"), or as soon thereafter as settlement documents can be prepared and any title issues can be resolved.

5. CONDITIONS. Self's obligations are expressly conditioned upon the satisfaction of each of the following conditions in the sole determination of Self, it being understood that the City is under no obligation whatsoever to expend any funds to satisfy any of these conditions. If any one of the following conditions cannot be met within 120 days after the Effective Date, Self may unilaterally terminate this Agreement:

- a. Receipt of a satisfactory title commitment.
- b. Receipt of a Phase I Environmental Assessment and Report (Phase I Report) conducted and prepared by an environmental engineering and inspection company selected by Self at Self's expense, and such other testing and reports as may be reasonably required by Self or recommended in the Phase I Report, any such additional testing and reports to be at Self's expense.
- c. Satisfaction by the City of all obligations under this Agreement.

6. SOLD "AS IS"; NO REPRESENTATIONS AND WARRANTIES BY CITY. Self acknowledges that the City has made no representations or warranties whatsoever in regard to the Property, except for Special Warranty of Title. Self agrees that he has inspected and is thoroughly familiar with the Property and is acquiring the Property in its "as is" condition. Self understands and agrees that the City has not made and makes no representation or warranties of any kind with respect to the condition of the Property or its fitness, suitability or acceptability for any particular use or purpose, and the City shall not be liable for any latent or patent defects therein.

7. NOTICES. All notices to the parties hereto will be delivered by hand, via certified mail return receipt requested, or via facsimile and all be deemed effective upon delivery if by hand

and upon confirmation of receipt if by other means, to the following address until the address is changed by notice in writing to the other party:

Self: Terry Self
c/o Jonathan Stone, Esq.
Norris & St. Clair, P.C.
2840 S. Lynnhaven Road
Virginia Beach, Virginia 23452

City: Director, Department of General Services
Office of Real Estate
City of Norfolk
232 East Main Street, Suite 250
Norfolk, Virginia 23510

With a copy to: Bernard A. Pishko
City Attorney
810 Union Street, Suite 900
Norfolk, Virginia 23510

8. SURVIVAL. The provisions contained in this Agreement will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

9. BROKERAGE OR AGENT'S FEES. Neither the City nor Self are represented by a real estate broker, agent or finder in this transaction. No fees or commissions are or will be due from or payable by the City as a result of this transaction. The City shall not have any obligation whatsoever to pay any brokerage or agent's fees or commissions, nor shall the City have any obligation whatsoever to see that any such fees or commissions are paid.

10. DEFAULT AND REMEDIES.

a. If the conveyance contemplated by this Agreement is not consummated because of City's or Self's default, the non-defaulting party may elect to:

(i) Terminate this Agreement; or

(ii) Seek and obtain specific performance of this Agreement.

11. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and will supersede the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The parties acknowledge there are no oral agreements, understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement. This Agreement may not be modified except by an agreement in writing signed by the parties.

12. GOVERNING LAW. This Agreement is to be construed in accordance with the laws of the Commonwealth of Virginia.

13. SUCCESSOR/ASSIGNMENT. This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns.

14. IRS REPORTING REQUIREMENTS. For the purpose of complying with any information reporting requirements or other rules and regulations of the Internal Revenue Service ("IRS") that are or may become applicable as a result of or in connection with the transaction contemplated by this Conveyance Agreement including, but not limited to, any requirements set forth in proposed Income Tax Regulation Section 1.6045-4 and any final or successor version thereof (collectively the "IRS Reporting Requirements"), City and Self hereby designate and appoint the Self's attorney or Title Company to act as the "Reporting Person" (as that term is defined in the IRS Reporting Requirements) to be responsible for complying with any IRS Reporting Requirements. The attorney or Title Company hereby acknowledges and accepts such designation and appointment and agrees to fully comply with any IRS Reporting Requirements that are or may become applicable as a result of or in connection with the transaction contemplated by this Conveyance Agreement. Without limiting the responsibility and obligations of the attorney or Title Company as the Reporting Person, City and Self hereby agree to comply with any provisions of the IRS Reporting Requirements that are not identified therein as the responsibility of the Reporting Person, including but not limited to, the requirement that City and Self each retain an original counterpart of this Conveyance Agreement for at least four (4) years following the calendar year of the Closing.

WITNESS the following duly authorized signatures and seals:

(SIGNATURE PAGES TO FOLLOW)

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

City Clerk

**COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:**

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on _____, do hereby certify that Marcus D. Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Purchase and Sale Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2015.

Notary Public

Registration No. _____

Contents Approved:

Director, Department of General Services

Approved as to Form and Correctness:

Deputy City Attorney

TERRY SELF

STATE OF VIRGINIA
CITY/COUNTY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City/County of Norfolk, in the State of Virginia, whose term of office expires on _____, do hereby certify that Terry Self, whose name is signed to the foregoing Conveyance Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2015.

Notary Public

Registration No. _____

EXHIBIT A
TAX ACCOUNT NUMBER 4874-5300

ALL that certain lot of land situate in the City of Norfolk, State of Virginia, and designated as Lot Numbered Five (5) in Block Numbered Three (3), as shown on the plat attached to the deed of Partition between Myra R. Barraud of the one part and Mary A. Barraud and John B. Swartwout of the other part, dated January 18th, 1915, which plat is of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, formerly Norfolk County, Virginia, in Map Book 13, Page 43.

October 9, 2015

EXHIBIT B

Instrument Control Number

2006 JUN -5 A 757

000011

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

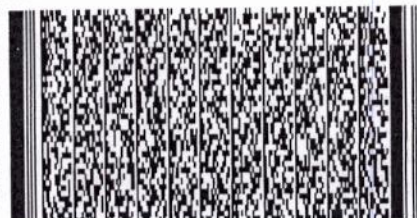
JUN.05 060023654

[ILS VLR Cover Sheet Agent 1.0.66]

T A X E X E M P T	C O R P	Date of Instrument:	[6/2/2006]		
		Instrument Type:	[DEC]		
		Number of Parcels	[1]		
		Number of Pages	[6]		
		City	<input checked="" type="checkbox"/> County	<input type="checkbox"/> [City Of Norfolk]	(Box for Deed Stamp Only)
First and Second Grantors					
		Last Name	First Name	Middle Name or Initial	Suffix
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	[City of Norfolk]			
<input type="checkbox"/>	<input type="checkbox"/>	[Trapani]	[Philip]	[R.]	[Jr.]
First and Second Grantees					
		Last Name	First Name	Middle Name or Initial	Suffix
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	[City of Norfolk]			
<input type="checkbox"/>	<input type="checkbox"/>	[
Grantee Address		(Name)	[City of Norfolk]		
		(Address 1)	[Norfolk City Attorney's Office]		
		(Address 2)	[810 Union Street, Room 900]		
		(City, State, Zip)	[Norfolk]	[VA]	[23510]
Consideration [0.00]		Existing Debt [0.00]	Assumption Balance [0.00]		

Prior Instr. Recorded at: City ☐ County ☐ [] Percent. in this Juris. [100]
 Book [] Page [] Instr. No [060020722]
 Parcel Identification No (PIN) [n/a]
 Tax Map Num. (if different than PIN) [4874-5300]
 Short Property Description [Lot 5, Block 13]
 Current Property Address (Address 1) [E S Maltby Avenue]
 (Address 2) [
 (City, State, Zip) [Norfolk] [VA] []

Instrument Prepared by [City of Norfolk]
 Recording Paid for by [N/A]
 Return Recording to (Name) [Charles Stanley Prentace]
 (Address 1) [Deputy City Attorney]
 (Address 2) [810 Union Street, Room 900]
 (City, State, Zip) [Norfolk] [VA] [23510]
 Customer Case ID [] [] []



mont wood

**DECLARATION OF
PROTECTIVE AND RESTRICTIVE COVENANTS
RELATIVE TO PROPERTY LOCATED AT
LOT 5, BLOCK 13 (TAX ACCOUNT #4874-5300)**

THIS DECLARATION, made this 31st day of MAY, 2006, by the
CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia
("Declarant"), whose address is City Hall, 810 Union Street, Norfolk, Virginia, 23510.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property described in Exhibit A,
attached hereto and made a part hereof ("Property"); and

WHEREAS, Declarant, in order to provide for orderly development,
improvement and maintenance of the Property, and the surrounding neighborhood,
deems it suitable and appropriate to establish and publish certain standards and
restrictions and to impose the same upon the Property;

NOW, THEREFORE, for and in consideration of the premises, the mutual
benefits accruing to Declarant, to the surrounding neighborhood, and to subsequent
purchasers of the Property, Declarant does hereby declare said Property to be subject to
the following covenants, which covenants shall run with the land and shall be binding
on all parties having or acquiring any right, title or interest in and to the Property or
any part thereof.

A. PERMITTED AND PROHIBITED USES.

1. Any construction on or development of the Property shall be in keeping with the City of Norfolk's General Plan, as well as the City's neighborhood plans, as such plans may be approved from time to time by the City Council.

2. No building or structure of any kind shall be constructed, altered or permitted on the Property without the prior written approval of the design of such building or structure by the Director of City Planning for the City of Norfolk ("Director"). A set of plans shall be submitted to the Director for approval as set forth herein.

3. All buildings and structures located on the Property shall be kept in good repair and the Property shall be kept in compliance with all City codes and ordinances.

4. If the Property is located on a street or in a district that is designated as an underground street or district under the provisions of the Norfolk City Code, 1979, as amended ("City Code"), then any building or structure located on the Property shall be served by underground utilities, and no above ground poles and wires shall be permitted, unless otherwise provided in the City Code.

B. REVIEW AND APPROVAL OF PLANS

1. All plans for any new buildings or structures to be located on the Property, including any additions to existing buildings or structures, must be presented to and approved by the Director in writing prior to the commencement of any construction.

2. The Director shall approve or disapprove plans submitted to him within forty-five (45) days after an application has been made to him. If the Director fails to act within the said 45 days, the application shall be deemed to have been approved. In the event the plans are disapproved by the Director, the party submitting the plans shall have 45 days from the date of such disapproval to submit revised plans, such revised plans to contain any revisions required by the Director.

3. The plans required to be submitted to the Director for approval shall include a full set of construction plans and site plans.

4. The construction of any building or structure on the Property must commence within ninety (90) days of the receipt of approval by the Director. Work thereon shall be prosecuted diligently and must be completed within a reasonable time not to exceed twelve (12) months from the date construction commences.

C. GRANTEE'S ACCEPTANCE

The Grantee of the Property subject to the coverage of this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of the Property, shall accept such deed or contract upon and subject to each and all of these protective and restrictive covenants and the agreements herein contained, and also the jurisdiction, rights, and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, consent, and agree to and with Declarant to keep, observe, comply with, and perform said protective and restrictive covenants.

D. EFFECTS OF PROTECTIVE AND RESTRICTIVE COVENANTS.

1. These protective and restrictive covenants shall run with the Property and shall be binding upon all parties and all persons claiming under them.

2. These protective and restrictive covenants may be changed, modified, or amended by a duly recorded instrument signed by the Declarant and the then current owner of the Property.

3. Each and every protective and restrictive covenant contained herein shall be considered to be an independent and separate covenant and agreement, and in the event that any one or more of said protective or restrictive covenants shall, for any reason, be held to be invalid or unenforceable, all remaining protective and restrictive covenants shall nevertheless remain in full force and effect.

4. The failure of any party or person to enforce a protective or restrictive covenant contained herein in any instance or against any person shall not constitute a waiver or abrogation of said protective or restrictive covenant.

E. REMEDIES.

The Declarant or any party to whose benefit these protective and restrictive covenants inure may proceed at law or in equity to prevent the occurrence, continuation, or violation of any of these protective and restrictive covenants, and the court in any such action may award reasonable expenses in prosecuting such action, including attorney's fees. In addition to any other remedy available at law or in equity, a violation of any protective or restrictive covenant contained herein shall, in the sole

discretion of the Declarant and upon the giving of written notice to the then current owner of the Property, cause the title to the Property to revert to the Declarant.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

CITY OF NORFOLK

By: Regina V.K. Williams [SEAL]
City Manager

Attest:

Approved as to form and correctness:

R. Breckenridge Daughtrey 5/31/06 City Clerk
[Signature] 5.18.08 Deputy City Attorney

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Marietta B. Cowart, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the 31ST day of August, 2008, do hereby certify that Regina V.K. Williams, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing instrument dated MAY 31, 2006 have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 31ST day of MAY, 2006.

Marietta B. Cowart [SEAL]
Notary Public

EXHIBIT "A"
Tax Account Number 4874-5300

ALL that certain lot of land situate in the City of Norfolk, State of Virginia, and designated as Lot Numbered Five (5) in Block Numbered Three (3), as shown on the plat attached to the deed of Partition between Myra R. Barraud of the one part and Mary A. Barraud and John B. Swartwout of the other part, dated January 15th, 1915, which plat is of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, formerly Norfolk County, Virginia, in Map Book 13, page 43.

INSTRUMENT #060023654
RECORDED IN THE CLERK'S OFFICE OF
NORFOLK ON
JUNE 5, 2006 AT 07:57AM
GEORGE E. SCHAEFER, CLERK
RECORDED BY: MXY